

ORIGINAL

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROGER CAIN AND JAQUELINE THOMAS

Plaintiffs,

v

MICHAEL RUSSELL, AUBREY SERGENT,
and CITY OF DETROIT,

Defendants.

JUDGE : Taylor, Anna Diggs
DECK : S. Division Civil Deck
DATE : 11/09/2004 @ 16:27:43
CASE NUMBER : 2:04CV74376
REM ROGER CAIN ET AL V MICHAEL
RUSSELL ET AL (DH)

MAGISTRATE JUDGE R. STEVEN WHALEN

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U.S. DIST. COURT CLERK
EAST DIST. MICH.
DETROIT-PSG

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FILED

ANSWER TO COMPLAINT

NOW COMES Defendants, Michael Russell, Aubrey Sargent and the City of Detroit, a municipal corporation, by and through their undersigned attorney and in answer to Plaintiff's Complaint say as follows:

FIRST DEFENSE

The Defendant, City of Detroit is protected from liability on the Plaintiffs' claims by governmental or official immunity. At all relevant times the City of Detroit was a governmental agency, and all conduct

set forth in Plaintiffs' Complaint arose out of activities expressly and/or impliedly mandated or authorized by Constitution, Statute and/or law such that the same were and are governmental functions. The individual Detroit Police Officers were engaged in the governmental function of law enforcement. MCLA 691.1407(2).

SECOND DEFENSE

The Plaintiffs have failed to state a claim against Defendants upon which relief can be granted.

THIRD DEFENSE

Any injury suffered by the Plaintiffs was proximately caused by their own negligence and other wrongdoing, including serious wrongdoing that gives rise to the wrongful-conduct defense as well as the comparative negligence defense.

FOURTH DEFENSE

The arrest of the Plaintiff, if any, was supported by probable cause and/or a valid warrant.

FIFTH DEFENSE

To the extent, if any, that these Defendants or anyone acting at the direction of or in concert with these Defendants used force against the Plaintiff, each such person acted in self defense.

SIXTH DEFENSE

To the extent, if any, that these Defendants or anyone acting at the direction of or in concert with these Defendants used force against the Plaintiff, each such use of force was privileged and lawful because the force was reasonably applied in the execution of a lawful arrest or in the lawful performance of other police duties.

SEVENTH DEFENSE

This Defendant, City of Detroit, did not have or otherwise adopt any customs, policies and/or procedures which caused or otherwise were the moving force behind any constitutional violations alleged in Plaintiffs' Complaint, nor did any such alleged customs, policies and/or procedures originate from a decision maker with final policy making authority. Further, this Defendant did not ratify, accept and/or otherwise condone any constitutional violations alleged in Plaintiffs' Complaint. Finally, this Defendant did not act with deliberate indifference as to known or obvious consequences with respect to the activities alleged in Plaintiffs' Complaint and/or as to any constitutional violations, nor is there any widespread practice of constitutional violations and/or failure to take corrective action regarding the same.

EIGHTH DEFENSE

The applicable Statutes of Limitation lapsed on some or all of Plaintiffs' claims prior to filing of the Complaint.

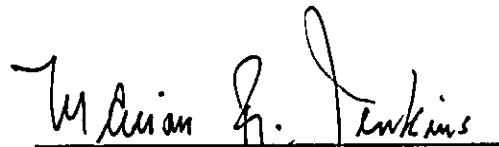
NINTH DEFENSE

These Defendants deny the allegations contained in paragraphs 2, 3, 10, 11, 12, 14, 15, 17, 18, 19, 20, 22, 23, 24, 25, 28, 29, 30, 31, 33, 34, 35, 36, 38, 39, 41, 42 and 43 of Plaintiffs' Complaint for the reason that the same are inaccurate and/or untrue. Defendants neither admit nor deny the rest and remainder of the allegations contained in Plaintiffs' Complaint, for the reason that they do not apply to these Defendants and leave Plaintiffs to their proofs.

RESERVATION OF ADDITIONAL DEFENSES

Defendants reserve the right to plead such additional defenses as may become known through research, investigation, discovery or otherwise.

WHEREFORE, Defendants, Michael Russell, Aubrey Sargent and the **CITY OF DETROIT**, a municipal corporation, respectfully demands dismissal of the Plaintiffs' claims or judgment of no cause of action on those claims, together with attorney fees and costs so wrongfully incurred.

A handwritten signature in black ink, appearing to read "Marion R. Jenkins", is written over a horizontal line.

MARION R. JENKINS (P26257)

Attorney for Defendant City of Detroit

1650 First National Building

Detroit, Michigan 48226

313-237-3032

Dated: November 5, 2004